

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

IN RE: STUDENT G.

.....

DECISION

Held: The student’s present 504 plan is to remain in effect as an item of good teaching practice. We refrain from any decision about whether this student’s disability presently qualifies as a disability either under the “old” standards governing Section 504 or the new standards resulting from Congress’s amendment of Section 504.

DATE: December 18, 2008

Jurisdiction and Travel of the Case

This is an appeal from a decision of a school district to deny a student certain modifications to his academic program. The student, through his parents, contends that these modifications are needed to protect his rights under Section 504 of the Rehabilitation Act of 1973. Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L.16-39-2 and R.I.G.L.42-87-5 (c). In a prior hearing we ruled that the student's previous 504 plan, which was developed to help the student ameliorate the effects of his undisputed Tourett's syndrome, was to remain in effect pending school district review of additional testing relating to this student. This testing has been completed, and the school district has reaffirmed its decision that this student is no longer entitled to a 504 plan because, in the view of the district, his disability does not substantially impact his ability to learn.

Position of the Parents

The parents contend that their son's Tourett's syndrome does have a substantial adverse effect on his potential for academic success. In particular the parents are concerned with this student's potential ability to cope with graduation by proficiency standard if modifications to his academic program do not remain in effect. The parents contend that this student's efforts to control his syndrome can cause him to lose focus in class, with the result that he can miss such things as homework assignments if special efforts are not taken place homework assignments on the blackboard

The School District

The school district contends that the student's outstanding grades show that his disability does not warrant modifications to his academic program. The district acknowledges that this student has a disability but it contends that this disability does not "substantially" limit this student's ability to learn.

Findings of Fact

1. It is undisputed that this student has Tourett's syndrome.
2. The student present 504 plan calls for relatively few and relatively minor modifications to the student's academic program. For example, under the plan the teacher is to write home work assignments on the blackboard and the student is to be provided with seating which limits classroom distractions.
3. It is evident from his grades that this student has high academic ability and that he has enjoyed great success at school. He seems to be particularly gifted in mathematics and foreign languages.
4. It is evident to us that at times this student's efforts to control the manifestations of his Tourett's syndrome can cause him to lose focus and concentration for brief periods of time.

Conclusions of Law

Section 504 of the Rehabilitation Act of 1973 was substantially revised by Congress in 2008¹. These amendments came about through amendments made to the Americans with Disabilities Act. One of the intents of these of these amendments was to overturn prior Supreme Court decisions which had, “interpreted the term ‘substantially limits’ to require a greater degree of limitation than was intended by Congress.”² The same amendments include difficulty in “concentrating” as a disability. These amendments become effective on January 1, 2009.

The Rhode Island Basic Education Plan’s “Generic Curriculum Standards” state that: “The school district’s curriculum and instructional procedures shall...be designed to meet the varying needs of all children.”³

Discussion

We will refrain from remanding this matter for reconsideration by the school district in the light of the amendments to Section 504’s that will come into effect on January 1, 2009. We conclude that the BEP’s requirement that: “The school district’s curriculum and instructional procedures shall...be designed to meet the varying needs of all children” suffices to decide this matter. We therefore conclude that the student’s present 504 plan, which the district concedes reflects just good teaching practice, independent of its status as a 504 plan, shall be implemented as a item of good teaching practice as a measure needed, “to meet the varying needs of all students.”

Conclusion

The student’s present 504 plan is to remain in effect as an item of good teaching practice. We refrain from any decision about whether this student’s disability presently qualifies as a disability either under the “old” standards governing Section 504 or the new standards resulting from Congress’s amendment of Section 504.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

December 18, 2008

Date

¹ S. 3406

² S. 3406

³ BEP Generic Standards at C.